

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

W. JACK SMITH)	
Claimant)	
VS.)	
)	Docket Nos. 173,077, 186,055
ATCHISON CASTING CORPORATION)	& 186,618
Respondent)	
Self-Insured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant filed an application for Appeals Board review of the Award entered by Special Administrative Law Judge Douglas F. Martin on December 6, 1996. The Appeals Board heard oral argument in Kansas City, Kansas.

APPEARANCES

Claimant appeared by his attorney, Mark S. Gunnison of Overland Park, Kansas. Respondent, a qualified self-insured, appeared by its attorney, John W. Fresh appearing for Larry R. Mears of Atchison, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Patrick M. Salsbury of Topeka, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Special Administrative Law Judge's Award.

ISSUES

This is a multiple docketed case that was consolidated by the Administrative Law Judge for the regular hearing. Also, all deposition testimony included evidence in regard to all three docket numbers and their respective separate dates of accidents. The Special

Administrative Law Judge, however, made only one Award and that Award was based only on Docket No. 186,618 with a date of accident of January 20, 1993. The claimant specifically notes in his application for review filed before the Appeals Board that he is only appealing Docket Nos. 173,077 and 186,055 and not Docket No. 186,618. However, the respondent and the Kansas Workers Compensation Fund (Fund) in their briefs and during oral argument before the Appeals Board raised issues with respect to Docket No. 186,618. The Appeals Board finds and has held on other occasions that all docketed claims which have been consolidated for litigation purposes are subject to Appeals Board review although not all of the docket numbers are listed in the application for review. See Carmen v. Best Buy, Docket Nos. 202,586, 204,207, and 210,069 (October 1997). Accordingly, the Appeals Board finds, in this case, all three docket numbers and their respective dates of accident are before the Appeals Board for review. The issues raised by the parties either in claimant's application for review or in the parties' briefs filed before the Appeals Board or at oral argument are as follows:

Docket No. 173,077

- (1) The nature and extent of claimant's disability.
- (2) Whether the correct amount of temporary total disability compensation was paid for this date of accident.

Docket No. 186,618

- (1) The nature and extent of claimant's disability.
- (2) Whether respondent is entitled to a credit as provided for in K.S.A. 44-510a (Ensley).

Docket No. 186,055

- (1) The nature and extent of claimant's disability.
- (2) Whether respondent is entitled to a credit as provided for in K.S.A. 44-510a.
- (3) Whether respondent is entitled to the retirement offset as provided by K.S.A. 44-501(h).
- (4) Whether the correct amount of temporary total disability compensation was paid for this date of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

Claimant claims permanent partial disability benefits for injuries suffered in three separate work-related accidents while employed by the respondent. The dates of the accidents are: September 16, 1991, designated as Docket No. 173,077; January 20, 1993, designated as Docket No. 186,618; and December 13, 1993, designated as Docket No. 186,055. The Special Administrative Law Judge found claimant's September 16, 1991, injury and resulting disability moot, reasoning that claimant's second injury that occurred on January 20, 1993, resulted in a greater disability than the 23 percent permanent functional impairment that claimant suffered from the September 16, 1991, injury. The Special Administrative Law Judge awarded claimant a 95 percent work disability for the January 20, 1993, work-related injury. Furthermore, with respect to claimant's December 13, 1993, injury, the Special Administrative Law Judge found claimant was not entitled to any additional work disability because the job tasks claimant could perform before the injury, he could perform after the injury.

Claimant appealed and contends he is eligible for an award of permanent functional impairment for the first injury that occurred on September 16, 1991. He also contends that following the December 13, 1993, injury he is permanently and totally disabled from engaging in any substantial and gainful employment. Thus, claimant argues he is entitled to permanent total benefits as provided for in K.S.A. 44-510f(a)(1).

In contrast, respondent contends the Special Administrative Law Judge's Award should be affirmed with respect to the 95 percent work disability award asserting the claimant failed to prove he was entitled to an additional work disability or was permanently and totally disabled after the December 13, 1993, accident. However, the respondent contends the Special Administrative Law Judge's temporary total disability award of 63.84 weeks should be set aside because the award does not allocate the weeks to a particular date of accident or the basis for the award of temporary total disability was not expressed. Finally, respondent contends the award is subject to both a K.S.A. 44-510a credit and the retirement offset contained in K.S.A. 44-501(h).

Docket No. 173,077

(1) On the date of claimant's first accident, September 16, 1991, claimant was 61 years of age and had been employed by the respondent or one of its predecessors for 30 years. Claimant worked as a finish chipper which required him to remove fins from the castings manufactured at the respondent's foundry. Claimant utilized a chipping hammer and high cycle grinder to complete the job of removing fins from the castings. Both of these tools

were hand-held, power operated, vibrated when used, and were required to be operated repetitively over an 8-hour or more shift.

Claimant, on September 16, 1991, testified he laid down on a board at work during a break and was unable to get off the board at the conclusion of the break. Claimant had symptoms in his upper extremities and also suffered pain in his back that radiated down his leg. Claimant notified the respondent of his pain and discomfort and was referred to Dr. Charles Young, a local physician, for medical treatment. Claimant was eventually referred to Dr. John J. Wertzberger, an orthopedic surgeon in Lawrence, Kansas.

Dr. Wertzberger first saw claimant on March 11, 1992, and diagnosed claimant with bilateral carpal tunnel syndrome, cervical spondylosis, discopathy, and stenosis. Dr. Wertzberger then referred claimant to Dr. Robert M. Beatty, a neurosurgeon in Kansas City, Kansas. As the result of the bilateral carpal tunnel syndrome, Dr. Beatty performed a right carpal tunnel release on October 9, 1992, and a left carpal tunnel release on November 11, 1992.

Claimant testified, after the September 16, 1991, injury, he did not return to work at his regular job as a chipper finisher but was placed on a light-duty job, at first, a janitor cleaning job, and later, a job repairing chains. Claimant testified he remained on the chain repairing job until December 13, 1993, the last day he worked for the respondent. The parties stipulated that claimant's average weekly wage on September 16, 1991, was \$561.17. After the September 16, 1991, injury, when claimant was placed on light duty, the parties stipulated claimant's average weekly wage was reduced to \$394.94. Therefore, the Appeals Board finds that claimant, following the September 16, 1991, injury, was eligible for the higher of a work disability or permanent functional impairment as provided for in K.S.A. 1991 Supp. 44-510e.

On the date of claimant's first accident, September 16, 1991, the work disability test was composed of two prongs, the loss of ability to perform work in the open labor market and loss of ability to earn a comparable wage. The Appeals Board finds the record does not contain evidence as to claimant's loss of ability to perform work in the open labor market in regard to his September 16, 1991, injury. Neither of the physicians who testified in this case, Dr. John Wertzberger nor Dr. Edward Prostic, expressed an opinion on claimant's permanent restrictions following only the September 16, 1991, injury. Therefore, neither of the two vocational experts who testified, Michael J. Dreiling or Daniel Fisher, were able to express an opinion on claimant's loss of ability to perform work in the open labor market following the September 16, 1991, accident.

Accordingly, the only component of the work disability test which is contained in the record is claimant's wage loss which was reduced from \$561.17 per week to \$394.94 per week for a 30 percent loss. Therefore, if claimant's loss of labor market of 0 percent is averaged with his wage loss of 30 percent, claimant's work disability as a result of his

September 16, 1991, injury is 15 percent. See Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990).

Both Dr. Wertzberger and Dr. Prostic did express an opinion on claimant's permanent functional impairment rating following the September 16, 1991, injury. Dr. Wertzberger found claimant had a 23 percent permanent functional impairment and Dr. Prostic assessed claimant a 15 to 20 percent permanent functional impairment. The Appeals Board concludes that claimant sustained a 20 percent permanent functional impairment as a result of this injury. Since claimant's functional impairment exceeds his work disability, the Appeals Board finds claimant is entitled to a 20 percent permanent partial disability award as a result of the September 16, 1991, work-related injury to his cervical spine, left elbow, and both wrists.

(2) Respondent argues that the Special Administrative Law Judge's award of temporary total disability compensation for 63.84 weeks should be set aside because the award does not allocate the temporary total disability weeks to a specific date of accident and further does not indicate the basis for the award.

The Appeals Board finds the parties stipulated that claimant received 12 weeks of temporary total disability compensation for the September 16, 1991, injury. Therefore, the Appeals Board concludes the claimant, in Docket No. 173,077 with the date of accident September 16, 1991, is entitled to 12 weeks of temporary total disability compensation.

Docket No. 186,618

(1) After claimant's bilateral carpal tunnel release surgeries in October and November of 1992, he continued to perform the job of chain repair for the respondent. In addition to repairing chains, part of the job duties consisted of servicing fire extinguishers located throughout the foundry. Claimant was required to go throughout the foundry and check whether the fire extinguishers were low on chemical and needed recharging. He then brought the fire extinguishers to his work area and recharged them.

On January 20, 1993, while claimant was twisting a lid off of one of the fire extinguishers to recharge it, claimant felt a sharp pain in his low back that radiated down to his right knee. Claimant notified the respondent of the accident and was sent to Dr. Wertzberger for examination and treatment. Dr. Wertzberger again referred claimant to Dr. Robert M. Beatty. Dr. Beatty treated claimant conservatively with medication and fitted him with a back brace.

Claimant was able to continue working for the respondent on the chain repair job following his January 20, 1993, low-back injury until December 13, 1993. The Special Administrative Law Judge awarded claimant a 95 percent work disability based on the testimony of vocational experts Michael J. Dreiling and Daniel Fisher. Both of those

vocational experts expressed opinions in regard to claimant's loss of ability to perform work in the open labor market and loss of ability to earn comparable wages in accordance with K.S.A. 1992 Supp. 44-510e. However, as previously noted, the claimant, following his January 20, 1993, low-back injury, was able to continue to work at a comparable wage of \$394.94 per week for respondent until December 13, 1993. The Appeals Board finds, that since claimant remained employed by respondent earning a comparable wage after the January 20, 1993, low-back injury, the presumption of no work disability contained in K.S.A. 1992 Supp. 44-510e applied and the claimant's entitlement to permanent partial disability benefits was limited to his permanent functional impairment. The Appeals Board finds Dr. Wertzberger was the only physician who expressed an opinion on claimant's permanent functional impairment that resulted from this injury. Dr. Wertzberger opined the permanent impairment of function was 13 percent to the body as a whole based on the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised). Therefore, the Appeals Board concludes claimant is entitled to a 13 percent permanent partial general disability award as a result of the January 20, 1993, low-back injury.

(2) Respondent argues that a K.S.A. 44-510a (Ensley) credit should be applied for the percentage of contribution that claimant's September 16, 1991, injury contributed to claimant's permanent partial disability award of 13 percent as a result of the January 20, 1993, injury. The Appeals Board finds a K.S.A. 44-510a (Ensley) credit is only applicable if the resulting disability was contributed to by the prior disability.

Claimant's disability, that resulted from his September 16, 1991, injury, did not contribute to claimant's overall disability as a result of the January 20, 1993, injury. This conclusion is supported by Dr. Wertzberger's testimony that the 23 percent permanent functional impairment that resulted from the September 16, 1991, injury was arrived at by combining functional impairment ratings of the cervical, left elbow, right wrist, and left wrist in accordance with the combined value chart of the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised). The 13 percent functional impairment expressed by Dr. Wertzberger for the January 20, 1993, injury only related to claimant's low-back and did not include the cervical, left elbow, right wrist, and left wrist that were injured in the September 16, 1991, injury. The Appeals Board concludes the prior disability made no contribution to the later disability and the credit as set forth in K.S.A. 44-510a (Ensley) does not apply.

Docket No. 186,055

(1) Claimant suffered his third injury while working for the respondent initially on December 6, 1993, and he continued to work until the injury worsened to the point that on December 13, 1993, claimant had to leave work because of the pain and discomfort. Claimant testified, that while transferring a heavy 5/8-inch chain from a 50-gallon barrel drum to a storage bin located approximately one yard from the floor, he felt a sharp pain in his neck as he was bending down pushing the heavy chain toward the back of the bin. The

pain radiated down claimant's left arm to his fingers. Claimant immediately notified the respondent of the accident. Claimant continued to work but because of the worsening of the pain and discomfort in his neck he left work on December 13, 1993.

At the regular hearing, claimant described the pain as so severe that he could hardly sleep at night. Claimant returned to Dr. Beatty for further medical treatment. On January 7, 1994, Dr. Beatty performed a bilateral C6-C7 and C5-C6 hemilaminotomy with decompression of the right and left C7 and C6 nerve roots. Thereafter, claimant underwent a bilateral L4-L5 laminectomy with decompression of the L5 nerve root on June 23, 1994. On the date of the regular hearing, March 27, 1995, claimant testified he had been released from treatment by Dr. Beatty.

As previously noted, the Special Administrative Law Judge made only one Award in this case and attributed the Award to the January 20, 1993, injury. The Special Administrative Law Judge found claimant was entitled to a 95 percent permanent partial general body disability based on work disability. The claimant argues that the record as a whole proves the December 13, 1993, injury rendered claimant completely and permanently incapable from engaging in any type of substantial and gainful employment. Claimant asserts that he is entitled to permanent total disability compensation in the amount of \$125,000 as provided for in K.S.A. 44-510f(a)(1). On the other hand, the respondent agrees with the Special Administrative Law Judge's Award except the respondent argues that a K.S.A. 44-510a (Ensley) credit should be applied as previously explained under the preceding docket number.

The Appeals Board agrees with the claimant and concludes the record as a whole proves claimant's December 13, 1993, work-related injury rendered claimant completely and permanently incapable of engaging in any type of substantial and gainful employment. Therefore, claimant is entitled to permanent total disability compensation in the amount of \$125,000, subject to the appropriate credits or offsets.

"In workers compensation cases, the existence, extent, and duration of an injured worker's incapacity is a question of fact for the trial court to determine." Wardlow v. ANR Freight Systems, 19 Kan. App. 2d 110, Syl. ¶ 1, 872 P.2d 299 (1993). In Wardlow, a 63-year-old unskilled worker was determined to be essentially and realistically unemployable and, therefore, completely and permanently incapable of engaging in any type of substantial and gainful employment under K.S.A. 1992 Supp. 44-510c(a)(2). 19 Kan. App. 2d at Syl. ¶ 5.

Edward J. Prostic, M.D., an orthopedic surgeon in Kansas City, Missouri, was the only physician to testify in this case who examined the claimant following the December 13, 1993, injury and subsequent surgeries. Dr. Prostic examined and evaluated claimant at his attorney's request on November 15, 1994. At that time, Dr. Prostic had the benefit of claimant's medical treatment records from Drs. Charles Young, Tom Shiwze,

John Wertzberger, and Robert M. Beatty. In accordance with the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised) and his personal experience, Dr. Prostic believed claimant's work-related accidents of September 16, 1991, January 20, 1993, and December 13, 1993, caused claimant to have permanent functional impairment of the cervical spine of 20 percent; of the right arm 12.5 percent; of the left arm 17.5 percent; and of the lumbar spine 20 percent. Dr. Prostic combined these percentages and assessed a total whole body functional impairment of greater than 50 percent. The doctor opined that the September 16, 1991, injury resulted in 15 to 20 percent permanent functional impairment. He also believed that the January 20, 1993, injury and the December 13, 1993, injury would not have occurred but for claimant's preexisting disease.

Dr. Prostic restricted claimant to lifting 25 pounds occasionally, 10 pounds frequently, and no weight on a continuous basis. Claimant should avoid using his head other than in the natural position. Claimant should also avoid working in the bent forward position. Claimant was restricted from repetitive forceful use of either hand. Any work performed should be work that would allow claimant to alternate between sitting and standing as needed.

Although Dr. Wertzberger did not examine or treat claimant after the December 13, 1993, injury and subsequent surgeries, he did place restrictions on claimant following the September 16, 1991, and the January 20, 1993, injuries of sedentary work, lifting limited to 10 pounds, and nonrepetitive use of either hand.

Claimant's treating physician, Dr. Beatty, did not testify in this case and his medical records or opinions were not contained in the record except for restrictions repeated in the vocational experts' reports and claimant's testimony at the regular hearing. Dr. Beatty's restrictions as quoted in the vocational experts' reports were occasional lifting, carrying, pushing, and pulling of 21 to 40 pounds. Claimant was also restricted from frequent bending, squatting, kneeling, climbing, twisting, and crawling. Standing was limited to two hours at a time, walking limited from one to two hours at a time, sitting limited from four to six hours at a time. During the redirect examination of claimant's vocational expert, Michael Dreiling, it was established that Dr. Beatty's records also indicated claimant should be restricted from all lifting, carrying, pushing, and pulling on a repetitive basis.

At the regular hearing, claimant testified he was receiving some type of social security retirement benefit. Also, claimant testified respondent had not returned him to work but had retired him because he could no longer perform any of the work required at the foundry. The record is not clear on whether claimant was receiving social security disability or old age retirement benefits. The record also is not clear on whether claimant was receiving any retirement benefits from the respondent. Respondent's representative, Allan Hundley, testified that the respondent had not retired claimant but claimant simply had not returned to work after his surgeries.

Claimant testified Dr. Beatty notified him following his cervical and lumbar surgeries that he would never be able to go back to work. Claimant testified he remained symptomatic in his back and left arm. After claimant was up for two or three hours, claimant testified he had to lay back down for an hour or so because of the symptoms in his back. Claimant further testified he could not sit or stand for a long period of time because of the pain and discomfort in his back and legs. Claimant also continues to take pain medication on a daily basis for his continuing pain and discomfort.

At the request of claimant's attorney, Michael J. Dreiling, a vocational expert, evaluated and interviewed the claimant for a vocational assessment on February 6, 1995, to determine what impact claimant's three work-related accidents had on his vocational capabilities. Mr. Dreiling found claimant to have completed the eighth grade and to have performed only physical labor all of his life. Mr. Dreiling concluded, that depending on which medical restrictions were considered, hypothetically there might be a few select occupations or employment opportunities in the labor market for the claimant. Utilizing Dr. Prostic's restrictions, Mr. Dreiling, because of the restriction requiring claimant to change positions frequently, believed it would be difficult for claimant to obtain employment. He opined, utilizing Dr. Wertzberger's restrictions, that claimant had lost 96 percent of all jobs available to him before his injuries. When Dr. Beatty's less restrictive limitations were used, Mr. Dreiling found a 75 percent vocational loss. However, Mr. Dreiling concluded claimant realistically could not be returned to work in the open labor market.

Vocational expert Daniel Fisher, at respondent's request, interviewed claimant on July 26, 1995, in regard to what impact claimant's three work-related injuries had on claimant's loss of ability to perform work in the open labor market and to earn a comparable wage. Based on only the restrictions imposed by Drs. Prostic, Wertzberger, and Beatty, Mr. Fisher determined claimant's loss of ability to perform work in the open labor market was 70 percent and his loss of weekly wage ranged from 49 to 70 percent depending on which pre- and post-injury average weekly wage was used. However, after taking into consideration claimant's age of 64, his eighth grade education, his present limited vocational interests, and his subjective medical complaints, Mr. Fisher concluded claimant realistically would not return to any type of gainful employment.

The Appeals Board finds the restrictions placed on claimant by Dr. Prostic and Dr. Wertzberger should be given more weight than those of Dr. Beatty. Although Dr. Beatty was claimant's treating physician, the restrictions that are set forth in the vocational experts' reports did not contain the additional restriction placed on claimant by Dr. Beatty against repetitive lifting, carrying, pushing, or pulling. Additionally, claimant presented uncontradicted testimony that Dr. Beatty told him he was unable to return to work. The Appeals Board concludes, since Dr. Beatty's testimony was not presented, it is impossible to ascertain what Dr. Beatty's opinion would be concerning claimant's current physical capacity to perform work in the labor market.

The Appeals Board concludes the record as a whole, which includes claimant's testimony and both vocational experts' testimony, established that following claimant's December 13, 1993, injury, claimant is realistically unemployable and, therefore, is permanently and totally disabled.

The Appeals Board is mindful that Dr. Prostic expressed an opinion on what impact claimant's injuries had on performing work tasks he had performed in 15 years preceding the December 13, 1993, injury. This evidence is relevant to the first component of the work disability test now contained in K.S.A. 44-510e which is applicable to claimant's December 13, 1993, injury. However, the Appeals Board finds it is unnecessary to address the work disability issue because of the previous finding that claimant is permanently and totally disabled.

(2) Both the respondent and the claimant agree, if a permanent partial or permanent total disability award is determined appropriate for the December 13, 1993, injury, then a credit is applicable for both the prior September 16, 1991, injury and the January 20, 1993, injury. The Appeals Board finds both of those injuries contributed 100 percent to claimant's resulting permanent total disability. Therefore, the weekly permanent total compensation rate will be reduced for 243 weeks in the amount of \$74.83 per week and by \$34.23 per week for 313.29 weeks. Thereafter, claimant will be paid the full permanent total weekly compensation rate of \$263.31 for 106.44 weeks.

(3) Respondent also requested that if an award was entered for the December 13, 1993, injury, then the retirement offset contained in K.S.A. 44-501(h) applies.

The Appeals Board finds the record does not contain evidence as to the amount or nature of the retirement benefits that claimant was receiving. Therefore, the retirement offset as contained in K.S.A. 44-501(h) cannot be applied.

(4) As discussed in Docket No. 173,077, the respondent questioned the Special Administrative Law Judge's Award of temporary total disability compensation. The parties stipulated that claimant received 55 weeks of temporary total disability compensation following the December 13, 1993, injury. Therefore, the Award for the December 13, 1993, injury will be calculated based on the 55-week stipulation. As noted below, the Appeals Board has calculated the Award for the December 13, 1993, injury utilizing a weekly compensation rate of \$263.31 which is based on stipulated average weekly wage for the December 13, 1993, injury in the amount of \$394.94.

AWARD

Docket No. 173,077

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge Douglas F. Martin dated December 6, 1996, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, W. Jack Smith, and against the respondent, Atchison Casting Corporation, a qualified self-insured, and the Kansas Workers Compensation Fund, for an accidental injury which occurred September 16, 1991, and based upon an average weekly wage of \$561.17.

Claimant is entitled to 12 weeks of temporary total disability compensation at the rate of \$289 per week or \$3,468.00, followed by 403 weeks of permanent partial general disability compensation at the rate of \$74.83 per week or \$30,156.49 for a 20% permanent partial general disability for a total award of \$33,624.49.

As of February 28, 1998, there is due and owing claimant 12 weeks of temporary total disability compensation at the rate of \$289 per week or \$3,468, followed by 324.71 weeks of permanent partial disability compensation at the rate of \$74.83 per week in the sum of \$24,298.05 for a total of \$27,766.05, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$5,858.44 is to be paid for 78.29 weeks at the rate of \$74.83 per week, until fully paid or further order of the Director.

Future medical treatment for claimant's injuries may be awarded upon proper application to and approval by the Director.

Unauthorized medical expense up to the statutory maximum is awarded to the claimant upon proper presentation of the expense.

Pursuant to the stipulation of the respondent and the Fund, the Fund is ordered to pay 60% of the Award.

All remaining orders entered by the Special Administrative Law Judge in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Docket No. 186,618

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge Douglas F. Martin dated December 6, 1996, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, W. Jack Smith, and against the respondent, Atchison Casting Corporation, a qualified self-insured, and the Kansas Workers Compensation Fund, for an accidental injury which occurred on January 20, 1993, and based upon an average weekly wage of \$394.94.

Claimant is entitled to 415 weeks of permanent partial disability compensation at the rate of \$34.23 per week for a 13% permanent partial general disability, for a total award of \$14,205.45.

As of February 28, 1998, there is due and owing claimant 266.43 weeks of permanent partial disability compensation at the rate of \$34.23 per week for a total of \$9,119.90 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$5,085.55 is to be paid for 148.57 weeks at the rate of \$34.23 per week until fully paid or further order of the Director.

Future medical treatment for claimant's injuries may be awarded upon proper application to and approval by the Director.

Unauthorized medical expense up to the statutory maximum is awarded to the claimant upon proper presentation of the expense.

Pursuant to the stipulations of the respondent and the Fund, the Fund is ordered to pay 60% of the Award.

All remaining orders entered by the Special Administrative Law Judge in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Docket No. 186,055

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge Douglas F. Martin dated December 6, 1996, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDING IN FAVOR of the claimant, W. Jack Smith, and against the respondent, Atchison Casting Corporation, a qualified self-insured, and the Kansas Workers Compensation Fund, for an accidental injury which occurred on December 13, 1993, and based upon an average weekly wage of \$394.94.

Claimant is entitled to 55 weeks of temporary total disability compensation at the rate of \$263.31 per week or \$14,482.05, followed by 243 weeks of permanent total compensation at the rate of \$263.31 per week less a weekly reduction of \$109.06 per week for prior contributing disabilities equalling a reduced weekly rate of \$154.25 or \$37,482.75, followed by 70.29 weeks of permanent total disability compensation at \$263.31 per week less a weekly reduction of \$34.23 for prior contributing disabilities equalling a reduced weekly rate of \$229.08 or \$16,102.03, followed by 106.44 weeks of permanent total disability compensation at \$263.31 per week or \$28,026.72 for a permanent total disability, making a total award of \$96,093.55.

As of February 28, 1998, there is due and owing claimant 55 weeks of temporary total disability compensation at the rate of \$263.31 per week or \$14,482.05, followed by 164.71 weeks of permanent total disability compensation at the reduced rate of \$154.25 per week or \$25,406.52 for a total of \$39,888.57 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$56,204.98 is to be paid for 78.29 weeks of permanent total disability compensation at the reduced rate of \$154.25, followed by 70.29 weeks of permanent total disability compensation at the reduced rate of \$229.08, thereafter followed by 106.44 weeks at the unreduced rate of \$263.31 per week until fully paid or further order of the Director.

Future medical treatment for claimant's injuries may be awarded upon proper application to and approval by the Director.

Unauthorized medical expense up to the statutory maximum is awarded to the claimant upon proper presentation of the expense.

Pursuant to the stipulation of the respondent and the Fund, the Fund is ordered to pay 60% of the Award.

All remaining orders entered by the Special Administrative Law Judge in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Mark S. Gunnison, Overland Park, KS
 Larry R. Mears, Atchison, KS
 Patrick M. Salsbury, Topeka, KS
 Bryce D. Benedict, Administrative Law Judge
 Philip S. Harness, Director